APPENDIX

Agricultural Adjustment Act, c. 25, 48 Stat. 31:

SEC. 9. (a) To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. When the Secretary of Agriculture determines that rental or benefit payments are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation. The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. The rate of tax shall conform to the requirements of subsection (b). Such rate shall be determined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements. The processing tax shall terminate at the end of the marketing year current at the time the Secretary proclaims that rental or benefit payments are to be discontinued with respect to such commodity. The marketing year for each commodity shall be ascertained and prescribed

by regulations of the Secretary of Agriculture: *Provided,* That upon any article upon which a manufacturers' sales tax is levied under the authority of the Revenue Act of 1932 and which manufacturers' sales tax is computed on the basis of weight, such manufacturers' sales tax shall be computed on the basis of the weight of said finished article less the weight of the processed cotton contained therein on which a processing tax has been paid.

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(d) As used in part 2 of this title—

(1) In case of wheat, rice, and corn, the term "processing" means the milling or other processing (except cleaning and drying) of wheat, rice, or corn for market, including custom milling for toll as well as commercial milling, but shall not include the grinding or cracking thereof not in the form of flour for feed purposes only.

(2) In case of cotton, the term "processing" means the spinning, manufacturing, or other processing (except ginning) of cotton; and the term "cotton" shall not include cotton linters.

(3) In case of tobacco, the term "processing" means the manufacturing or other processing (except drying or converting into insecticides and fertilizers) of tobacco.

(4) In case of hogs, the term "processing" means the slaughter of hogs for market.

(5) In the case of any other commodity, the term "processing" means any manufacturing or other processing involving a change in the form of the commodity or its preparation for market, as defined by regulations of the Secretary of Agriculture; and

in prescribing such regulations the Secretary shall give due weight to the customs of the industry.

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[U. S. C., Title 7, Sec. 609.]

Revenue Act of 1936, c. 690, 49 Stat. 1648:

TITLE VII—REFUNDS OF AMOUNTS COLLECTED UNDER THE AGRICULTURAL ADJUSTMENT ACT

SEC. 902. CONDITIONS ON ALLOWANCE OF REFUNDS.

No refund shall be made or allowed, in pursuance of court decisions or otherwise, of any amount paid by or collected from any claimant as tax under the Agricultural Adjustment Act, unless the claimant establishes to the satisfaction of the Commissioner in accordance with regulations prescribed by him, with the approval of the Secretary, or to the satisfaction of the trial court, or the Board of Review in cases provided for under section 906, as the case may be—

(a) That he bore the burden of such amount and has not been relieved thereof nor reimbursed therefor nor shifted such burden, directly or indirectly, (1) through inclusion of such amount by the claimant, or by any person directly or indirectly under his control, or having control over him, or subject to the same common control, in the price of any article with respect to which a tax was imposed under the provisions of such Act, or in the price of any article processed from any commodity with respect to which a tax was imposed under such Act, or in any charge or fee for services or processing; (2) through reduction of the price paid for any such commodity; or (3) in any manner whatsoever; and that no under-

standing or agreement, written or oral, exists whereby he may be relieved of the burden of such amount, be reimbursed therefor, or may shift the burden thereof; or

(b) That he has repaid unconditionally such amount to his vendee (1) who bore the burden thereof, (2) who has not been relieved thereof nor reimbursed therefor, nor shifted such burden, directly or indirectly, and (3) who is not entitled to receive any reimbursement therefor from any other source, or to be relieved of such burden in any manner whatsoever. [U. S. C. Supp. V, Title 7, Sec. 644.]

SEC. 905. JURISDICTION OF COURTS.

Concurrent with the Court of Claims, the District Courts of the United States (except as provided in section 906 of this title) shall have jurisdiction of cases to which this title applies, regardless of the amount in controversy, if such district courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, on jurisdiction of such courts based upon the amount in controversy. The United States Customs Court shall not have jurisdiction of any such cases. [U. S. C. Supp. V, Title 7, Sec. 647.]

SEC. 906. PROCEDURE ON CLAIMS FOR REFUNDS OF PROCESSING TAXES.

(a) Notwithstanding any other provision of law, no suit or proceeding, whether brought before or after the date of the enactment of this Act, shall be brought or maintained in any court for the refund of any amount paid or collected as processing tax, as defined herein, under the Agricultural Adjustment Act, except as provided in this section. The Commissioner shall allow or

disallow, in whole or in part, any claim for refund of any such amount within three years after such claim was filed, unless such time has been extended by written consent of the claimant.

(b) There is hereby established in the Treasury Department a Board of Review (hereinafter referred to as "the Board"). * * * The Board shall have jurisdiction in proceedings under this section to review the allowance or disallowance of the Commissioner of a claim for refund, and to determine the amount of refund due any claimant with respect to such claim. The Commissioner shall make refund of any such amount determined by a decision of the Board which has become final. The proceedings of the Board and its divisions shall be conducted in accordance with such rules and regulations as the Board may prescribe, with the approval of the Secretary.

* * * * *

(g) A review of the decision of the Board, made after the hearing provided in this section, may be obtained by the claimant or Commissioner by filing a petition for review in the Circuit Court of Appeals of the United States within any circuit wherein such claimant resides, or has his principal place of business, or, if none, in the United States Court of Appeals for the District of Columbia, or any such court which may be designated by the Commissioner and the claimant by stipulation in writing, within three months after the date of the mailing to the claimant and the Commissioner of the copy of the findings and decision of the Board. * * * [U. S. C. Supp. V, Title 7, Sec. 648.]

SEC. 907. EVIDENCE AND PRESUMPTIONS.

(a) Where the refund claimed is for an amount paid or collected as processing tax, as defined herein, it shall be prima-facie evidence that the burden of such amount was borne by the claimant to the extent (not to exceed the amount of the tax) that the average margin per unit of the commodity processed was lower during the tax period than the average margin was during the period before and after the tax. If the average margin during the tax period was not lower, it shall be prima-facie evidence that none of the burden of such amount was borne by the claimant but that it was shifted to others.

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[U. S. C. Supp. V, Title 7, Sec. 649.]

SEC. 910. LIABILITY OF COLLECTORS.

No collector of internal revenue or customs, or internal revenue or customs officer or employee, shall be in any way liable to any person for any act done by him in the assessment or collection of any amount as tax under the Agricultural Adjustment Act, or for the recovery of any money exacted by or paid to him and paid into the Treasury, in performance of his official duties under the provisions of such Act, or if such collector or officer acted under the direction of the Secretary or other proper officer of the Government. [U. S. C. Supp. V, Title 7, Sec. 652.]

SEC. 913. DEFINITIONS.

When used in this title—

(a) The term "tax" means a tax or exaction denominated a "tax" under the Agricultural Adjustment Act, and shall include any penalty, addition to tax, additional tax, or interest applicable to such tax.

(b) The term "processing tax" means any tax or exaction denominated a "processing tax" under the Agricultural Adjustment Act, but shall not include any amount paid or collected as tax with respect to the processing of a commodity for a customer for a charge or fee.

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[U. S. C. Supp. V, Title 7, Sec. 655.]

SEC. 916. RULES AND REGULATIONS.

The Commissioner shall, with the approval of the Secretary, prescribe such rules and regulations as may be deemed necessary to carry out the provisions of this title.

[U. S. C. Supp. V, Title 7, Sec. 658.]

Treasury Regulations 81, promulgated under the Agricultural Adjustment Act:

ART. 2. *Definitions.*—When used in these regulations, the term

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(h) *Processing* has various meanings, depending upon the commodity in question:

(1) In case of wheat, rice, and corn, the term "processing" means the milling or other processing (except cleaning and drying) of wheat, rice, or corn for market, including custom milling for toll as well as commercial milling, but shall not include the grinding or cracking thereof not in the form of flour for feed purposes only.

(2) In case of cotton, the term "processing" means the spinning, manufacturing, or other processing (except ginning) of cotton; and the term "cotton" shall not include cotton linters.

(3) In case of tobacco, the term "processing" means the manufacturing or other processing (except drying or converting into insecticides and fertilizers) of tobacco.

(4) In case of hogs, the term "processing" means the slaughter of hogs for market.

(5) In the case of any other commodity, the term "processing" means any manufacturing or other processing involving a change in the form of the commodity or its preparation for market, as defined by regulations of the Secretary of Agriculture. In the event that a tax becomes effective with respect to a competing commodity the Commissioner of Internal Revenue will announce the regulations of the Secretary of Agriculture defining "processing" as respects such competing commodity.

(i) *Processor* is any person who does the first domestic "processing" (as defined in paragraph (h), above) of any commodity.

(j) *Processing tax* means the tax under the Act on the first domestic processing of a commodity.

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Treasury Regulations 96, promulgated under the Revenue Act of 1936:

ARTICLE 101. *Definitions.*—As used in these regulations—

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(h) *Custom processing tax.*—The term "custom processing tax" means the amount paid under the Agricultural Adjustment Act as tax on the first domestic processing of that quantity of a commodity which was processed for a customer for a charge or fee. Examples: Milling of wheat for toll; slaughtering of hogs for a charge or fee.

(i) *Charge or fee for processing.*—The term "charge or fee for processing" includes any form of compensation charged or taken by the processor for services rendered in processing a commodity for a customer.

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(k) *Paid as tax.*—The term "paid as tax" includes any amount paid to, or collected by, a collector of internal revenue or a collector of customs as tax under the Agricultural Adjustment Act.

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ARTICLE 201. *Claims—Form and where to file.*—Claims for the refund of tax shall be made on the prescribed forms. Such claims shall be prepared in accordance with the instructions contained on the forms and in accordance with the provisions of these regulations. Each claim (except claims for refund of compensating tax—see article 401) shall be filed with the collector of internal revenue for the district wherein the claimant has his principal place of business. If the claimant has no principal place of business in the United States, the claim shall be filed with the collector of internal revenue located at Baltimore, Md. Copies of the prescribed forms may be obtained from any collector of internal revenue.

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ARTICLE 501. *Claim form prescribed.*—Claims for refund of amounts paid as tax on the first domestic processing of a commodity with respect to that quantity of the commodity processed for a customer for a charge or fee, and which tax is identified in these regulations as "custom processing tax" (see paragraph (*h*) of article 101), shall be filed on P. T. Form 78. (See Chapter II of these regulations for general provisions relating to all claims.)

ART. 502. *Limitation as to number of claims.*—A separate claim shall be filed with respect to each commodity processed. Only one claim shall be filed by any person with respect to the total amount paid by such per-